

Senate Joint Resolution No. 2

RESOLUTION CHAPTER 157

Senate Joint Resolution No. 2—Relative to health care.

[Filed with Secretary of State August 19, 2004.]

LEGISLATIVE COUNSEL'S DIGEST

SJR 2, Figueroa. Health care.

This measure would request Congress to enact and the President to sign an HMO Patient's Bill of Rights or alternative legislation expanding the rights of states. The measure would request the Governor to support that legislation and to lobby the Congress and the President in that regard.

WHEREAS, In 1974 Congress passed the Employee Retirement Income Security Act, now commonly known as ERISA, in order to protect workers and guarantee the benefits provided to them by employers; and

WHEREAS, California, under the provisions of Senate Bill 21 (Chapter 536 of the Statutes of 1999), provides patients in a health maintenance organization (HMO) the ability to obtain compensation from their HMOs when HMOs wrongfully deny them care and when that wrongful denial causes harm such as death, disability, chronic pain or illness, disfigurement, or lost wages and employment; and

WHEREAS, California and Texas led the nation in providing patients with this remedy; and

WHEREAS, On June 21, 2004, the United States Supreme Court ruled in *Aetna Health Inc. v. Davila* that ERISA completely preempts any state laws that give HMO patients the ability to sue their HMO for harms caused by the HMO's denial of care; and

WHEREAS, The ruling in *Aetna Health, Inc. v. Davila* places at risk the provisions of Senate Bill 21 and the laws of 10 other states, including Texas; and

WHEREAS, Under this ruling, HMOs will be the only type of business exempted from responsibility for their wrongdoing, even if the wrongdoing leads to the death or permanent disability of the elderly or children, and no other business or entity of any kind except the HMO industry is permitted by federal law to avoid paying for the harms it causes; and

WHEREAS, The effect of this ruling will be to exempt HMOs from liability when they make exactly the same kinds of decisions that would cause a licensed health care provider to be held liable; and

WHEREAS, Under the Supreme Court's ruling, those who work for government (including state legislators, Members of Congress, Governor Schwarzenegger, and the President) could all hold their HMOs accountable for the harms caused by their wrongful denials of care, but over one hundred million Americans who are employed in the private sector could not; and

WHEREAS, This extraordinary exemption from liability is against public policy, which generally seeks to hold parties responsible for their actions and seeks to place on wrongdoers, rather than taxpayers, the cost of their wrongdoing; and

WHEREAS, A policy that prohibits parties from being held responsible for their actions promotes carelessness, uncompensated harm, and, potentially, the loss of life; and

WHEREAS, Clear policies emphasizing accountability and responsibility for harms caused are particularly critical in the health care field in order to better ensure the public health and safety; and

WHEREAS, It is now clear that states such as California and Texas have little or no ability to ensure that HMOs, rather than the taxpayers, pay for the costs of their wrongdoing, and must rely on the United States Congress to provide this protection; now, therefore, be it

Resolved by the Senate and Assembly of the State of California, jointly, That the Legislature respectfully requests the Congress to enact and the President to sign into law a meaningful and enforceable HMO Patient's Bill of Rights that includes the ability for HMO patients to hold their HMO legally responsible for harms caused by their wrongdoing and that treats HMOs in the same manner as all other businesses and individuals in that regard, or, in the alternative, to enact and sign legislation to amend ERISA to clearly authorize states to provide greater remedies than are available under federal law if states wish to provide their citizens with greater protections than federal law makes available; and be it further

Resolved, That the Legislature calls upon Governor Schwarzenegger no later than 30 days after the passage date of this resolution to announce his administration's support for the right of a California patient to obtain damages from his or her HMO when the HMO wrongfully denies care and causes harm and to pledge that he will lobby the Congress and the President for the prompt enactment of such federal legislation; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the



Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States.

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